

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RODNEY J. KAGEL,)	
)	
Petitioner,)	
)	
v.)	No. 4:21-cv-00822-SRW
)	
ERIC SCHMITT,)	
)	
Respondent.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon review of petitioner's response to the order to show cause dated November 5, 2021. Having carefully reviewed petitioner's response, the Court concludes that his arguments are without merit and that the instant action shall be dismissed for petitioner's failure to exhaust state court remedies.

On November 5, 2021, the Court issued an order to show cause as to why the Court should not dismiss the instant petition for writ of habeas corpus as time-barred and for failure to exhaust state remedies. *See* ECF No. 6. As to petitioner's failure to exhaust state court remedies, petitioner responds that he was not advised of his rights under Missouri Rule 24.035 to file post-conviction relief proceedings. Petitioner concedes that he never filed a motion to vacate, set aside or correct the judgment or sentence under Missouri Rule 24.035 once he was in custody of the Missouri Department of Corrections. Missouri Rule 24.035 is the proper means of relief from constitutionally ineffective assistance of counsel. Nor has petitioner filed a motion for Missouri state court habeas corpus relief under Missouri Rule 91.01.

Petitioner has never filed any post-conviction motions in Missouri state court. A federal court cannot hear claims in a § 2254 petition before the state court has had the chance to hear those

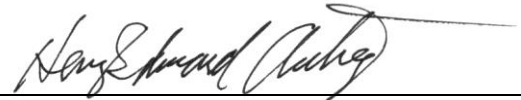
claims. *See* 28 U.S.C. § 2254(b)(1)(A). Because petitioner's claims in this § 2254 proceeding have not been presented to the Missouri courts, petitioner has not exhausted his available Missouri state court remedies. The Court will dismiss petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 for failure to exhaust state court remedies.

Accordingly,

IT IS HEREBY ORDERED that petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**. Rule 4 of the Rules Governing § 2254 Proceedings.

An Order of Dismissal will accompany this opinion, memorandum and order.

Dated this 18th day of January, 2022.

A handwritten signature in black ink, reading "Henry Edward Autrey", is written over a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE